



January 30, 2002

Ms. Larissa T. Roeder
Assistant District Attorney
County of Dallas
Frank Crowley Courts Building, LB 19
Dallas, Texas 75207-4399

OR2002-0440

Dear Ms. Roeder:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 157958.

The Dallas County District Attorney's Office (the "district attorney") received a request for:

- (1) the affidavit of the party making a criminal claim against the requestor's son;
- (2) the reason and authority under which the requestor's son was arrested;
- (3) the grand jury indictment of his son;
- (4) the authority of police officers to impersonate peace officers;
- (5) all crimes and actors in the matter involving the requestor's son;
- (6) whether the requestor's son was an actor in this matter, and if so, the information upon which the criminal claim against the requestor's son is based;
- (7) the holder of the requestor's son; and
- (8) whether the requestor's son was arrested in violation of the Texas or United States Constitution.

You indicate you have released redacted arrest warrant affidavits to the requestor. However, you claim that the remainder of the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information contains arrest warrants and arrest warrant affidavits that have been filed with a court. Documents filed with a court are public documents and must be released. See Gov't Code § 552.022(a)(17) (providing that information contained in a public court record is public information); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57-58 (Tex. 1992) (sexual assault victim's privacy right not violated by release of information in public court document). Therefore, the district attorney must release the marked arrest warrants and arrest warrant affidavits in full to the requestor.

Next, we address your argument that the requested information is not subject to disclosure as grand jury information. This office has concluded that grand juries are not governmental bodies that are subject to the Public Information Act (the "Act"), so that records that are within the actual or constructive possession of a grand jury are not subject to disclosure under the Act. See Open Records Decision No. 513 (1988). We understand you to assert that the information is in the constructive possession of the grand jury because the district attorney holds the information as an agent of the grand jury. See Gov't Code §§ 552.003(B), .0035(a); see also Open Records Decision No. 398 at 2 (1983) (grand jury is part of judiciary for purposes of the Act). We find the situation here to be substantially similar to the situation we addressed in Open Records Decision No. 513 (1988). In that decision, a district attorney claimed that all of the information responsive to an open records request and contained in his investigation file was in the constructive possession of the grand jury because the information was held by the district attorney as an agent of the grand jury. The district attorney thus asserted that his entire investigative file was subject to the judiciary exclusion and outside the reach of the Act. In response to this argument, we stated:

Not all of the information at issue here can be deemed to be within the constructive possession of the grand jury. Your investigation began before any information was submitted to the grand jury. Moreover, the grand jury did not formally request or direct all of the district attorney's actions in this investigation. See generally Open Records Decision No. 398 (1983) (audit prepared at direction of grand jury). *Information obtained pursuant to a grand jury subpoena issued in connection with this investigation is within the grand jury's constructive possession. On the other hand, the fact that information collected or prepared by the district attorney is submitted to the grand jury, when taken alone, does not mean that the information is in the grand jury's constructive possession when the same information is also held by the district attorney.* Information not produced as a result of the grand jury's investigation may be protected from disclosure under one of [the Act's] exceptions, but it is not excluded from the reach of [the Act] by the judiciary exclusion.

Open Records Decision No. 513 at 3 (1988) (emphasis added). As explained above, we believe that only those portions of information obtained pursuant to a grand jury subpoena or at the direction of a grand jury are within the grand jury's constructive possession and therefore subject to the judiciary exclusion and outside the reach of the Act. Information held by the district attorney that was not obtained pursuant to a grand jury subpoena or at the direction of the grand jury is subject to the Act. You do not indicate, nor does it appear, that any of the submitted information was obtained pursuant to a grand jury subpoena or at the direction of a grand jury. Therefore, we will address whether the submitted information is excepted from disclosure under the Act.

You contend that the submitted information is excepted from disclosure under section 552.101. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses common-law privacy and excepts from disclosure private facts about an individual. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information is excepted from required public disclosure by a common-law right of privacy if the information (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.*

We have previously concluded that a sexual assault victim has a common-law privacy interest that prevents disclosure of information that would identify her. Open Records Decision No. 339 (1982); *see Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, *writ denied*) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). Here, the submitted information relates to an alleged sexual assault, and the requestor appears to know the identity of the sexual assault victim. We therefore believe that withholding only identifying information from the requestor would not preserve the victim's common law right to privacy. Consequently, the district attorney must withhold all of the submitted information from the requestor, with the exception of any court filed documents, pursuant to section 552.101 of the Government Code and common-law privacy.¹

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

¹Based on this finding we need not reach your remaining arguments.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 157958

Enc. Submitted documents

c: Mr. Wesley Bowden
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(w/o enclosures)